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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1759

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 91
Daytona Beach,
Florida 32015

Attorneys for Daytona Beach Racing and Recreational Facilities District

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32018

Attorneys for International Speedway Corporation

Washington, D.C. • THIEL PRESS • (202) 638-4521

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IN THE

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OCTOBER TERM, 1976

No.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

The Daytona Beach Racing and Recreational Facilities District and the International Speedway Corporation appeal from an opinion and judgment of the Supreme Court of Florida rejecting the appellants' challenge under the Contract Clause of the United States Constitution to the State's 1973 repeal of a permanent tax exemption given to the District by 1955 legislation designed to encourage the construction of an automobile racing facility.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (Appendix A, pp. 1a-9a, *infra*), is reported at 341 So.2d 498 (Fla. 1977). The opinion of the Circuit Court of Florida, Seventh Judicial Circuit, dated October 17, 1975 (Appendix F, pp. 16a-19a, *infra*) is not reported.

JURISDICTION

The opinion of the Supreme Court of Florida (Appendix A, pp. 1a-9a, *infra*) was issued on November 4, 1976. A timely petition for rehearing was filed. Rehearing was denied (by a vote of 4-to-2) on February 9, 1977 (Appendix B, p. 10a, *infra*). Notices of appeal to this Court (Appendices C and D, pp. 11a-14a, *infra*) were filed on May 6, 1977. On May 9, 1977, Mr. Justice Powell entered an order extending the time for docketing this appeal to and including June 9, 1977 (Appendix E, p. 15a, *infra*). The jurisdiction of this Court rests upon 28 U.S.C. §1257(2).

STATUTES INVOLVED

Section 13 of Chapter 31343 of the Laws of Florida (1955), provides:

> Exemption from Taxation. — As the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein, and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District, and as the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, and as the racing and recreational facilities will constitute public property used for public purposes, no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom and any bonds issued under the provisions of this Act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the state.

Chapter 73-647 of the Laws of Florida (1973) provides:

> WHEREAS, facilities of the Daytona Beach racing and recreational facilities district have been exempt from taxation and assessment, and
>
> WHEREAS, the ever-increasing cost of government in Volusia County requires that additional funds be derived from taxation of property in the county, and
>
> WHEREAS, the removal of such exemption will result in certain facilities in Volusia County providing their pro rata share of the cost of government, and
>
> WHEREAS, the legislation intends that any facilities of said district be taxed in the same manner as any other property in Volusia County, NOW THEREFORE
>
> *Be It Enacted by the Legislature of the State of Florida:*
>
> Section 1. Section 13 of chapter 31343, Laws of Florida, 1955, is hereby repealed.
>
> Section 2. This act shall take effect January 1, 1974.

QUESTIONS PRESENTED

1. Whether the Florida Legislature has violated the Contract Clause of the United States Constitution by its 1973 repeal of a permanent tax exemption, granted by the Legislature in 1955 to encourage construction of a speedway facility in Daytona Beach, after the facility was built in reliance on the exemption, at an investment of several million dollars.

2. Whether the Supreme Court of Florida should be required to reconsider its November 1976 decision on the federal constitutional claim in light of this Court's April 27, 1977 decision in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977).

STATEMENT

In 1902, automobile racing competition began on the ocean beach at Daytona Beach, Florida.[1] Over the following three decades, the name of the city became synonymous with high speed automotive performance. Interest shifted from land speed trials to stock car racing on the World Famous Beach road race course. But as development of the beachfront area grew, encroaching upon that course, it became obvious that if racing in Daytona Beach was to continue – with the promise of increased tourism – automobile racing would have to be conducted at some location other than the beach. Municipal and county authorities recognized in the early 1950's that it was necessary to construct a modern automobile racing facility at Daytona Beach, and special legislation seeking to

[1] These facts are alleged in the appellants' complaint and have not been seriously disputed.

achieve this objective was enacted by the Florida Legislature. In 1953, the Legislature created the Daytona Beach Racing and Recreational Facilities Authority which was given certain enumerated powers. Chapters 29588, 29590, *Laws of Florida* (1953).

Together with county and city officials, members of the Authority conducted preliminary investigations and feasibility studies. They determined that construction of the project would cost almost $3 million, and they recommended that bonds be issued to finance such construction. In June 1955, the Florida Legislature substituted for the more limited powers conferred by the 1953 Act, a new law (Chapter 31343) which created the Daytona Beach Racing and Recreational Facilities District (one of the appellants in this case), and gave it broad authority to issue revenue bonds and enter into contracts and leases in order to construct the needed facility.

Included in the 1955 statute was Section 13 thereof (pp. 2-3, *supra*), titled "Exemption from Taxation," which declared that "[a]s the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District . . . no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom. . . ."

In December 1955, the District leased land from the City of Daytona Beach for the construction of the proposed speedway. It also authorized the issuance of $2.9 million in revenue bonds. The District was,

however, unable to sell the bonds. Therefore, it was forced to look for private financing. International Speedway Corporation – also an appellant – undertook to construct the facility at its own expense on land subleased from the District. A contract providing for such construction "within five years" was signed in November 1957. Between January 1958 and February 1959, the speedway was constructed at a cost exceeding $2 million. In addition, International Speedway Corporation has expended approximately $1.6 million on capital improvements since the opening of the facility.

In May 1973, the Florida Legislature, citing the "ever-increasing cost of government in Volusia County," specifically repealed the permanent tax exemption granted by Section 13 of the 1955 law. See p. 3, *supra*. The County Tax Assessor thereupon fixed the value of the leasehold interest at almost $6.8 million, which would result in an annual *ad valorem* tax of approximately $140,000.

The appellants challenged the validity of this repeal in federal and state courts. Their claim that the repeal violated the Contract Clause of Article I, Section 10 of the United States Constitution was made in a separate action instituted on September 10, 1974 in the United States District Court for the Middle District of Florida. *Daytona Beach Racing & Recreational Facilities District v. County of Volusia*, No. 74-267-Orl-Civ-Y. On November 7, 1974, the federal case was dismissed by the trial judge on the ground that the Tax Injunction Act, 28 U.S.C. §1341, barred federal suit. The Order explaining the ground for dismissal appears as Appendix G, pp. 20a-21a, *infra*, to this Jurisdictional Statement. The Court of Appeals for the Fifth Circuit summarily affirmed the dismissal without hearing oral argument.

Daytona Beach Racing & Recreational Facilities District v. County of Volusia, 512 F.2d 1404 (5th Cir. 1975).

An independent action challenging the repeal on grounds of Florida law had also been instituted in the Circuit Court for Volusia County on September 13, 1974. After dismissal of the federal constitutional claim by the United States District Judge, that claim was added, "under protest," as "Count II" of the complaint in State court. Paragraph 38 of the amended State complaint read:

> The Plaintiff Speedway would not have undertaken the construction and financing it did in 1958 if it had not been insured, by the provision of the law and by the indemnification agreement of Plaintiff District, that its interest in the real property would not be subject to taxes. The sudden imposition of such taxes on Speedway's interest substantially diminishes the value of its contract right and impairs the effectuation by both District and Speedway of the public purpose sought by the 1955 Act.

The appellants filed a motion for summary judgment based on Count 1, which asserted State claims, and the appellees replied with cross-motions for summary judgment. On October 17, 1975, the Circuit Judge granted summary judgment in favor of the appellants on the ground that the Florida Legislature had not repealed the "public purpose declaration" in the 1955 Act, and that so long as the property was being used for a "public purpose" it could not be subject to an *ad valorem* tax even upon the Legislature's directive. See Appendix F, pp. 16a-19a, *infra*. In his opinion, the Circuit Judge stated (p. 18a, *infra*):

> This Court does not deem it necessary to rule on the question of the impairment of contract argument to reach its decision.

On appeal, the Florida Supreme Court reversed by a 4-to-2 vote, with an opinion which appeared to decide in its concluding paragraph (without the benefit of any oral or written argument on the subject by most of the parties to the case) the "question of the impairment of contract argument" which the trial court had not reached. Citing no federal ruling and only one Florida case (*Straughn v. Camp*, 293 So.2d 689 (Fla. 1974)) the majority of the Florida Court held that "a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes" (p. 8a, *infra*). A timely petition for rehearing objected to the court's precipitous determination of this substantial constitutional question. The petition for rehearing was denied by a 4-to-2 vote (p. 10a, *infra*).

On remand of the case from the Supreme Court of Florida, the Circuit Judge indicated that he viewed the concluding paragraph of the opinion of the Supreme Court of Florida as a final disposition of the federal constitutional claim (Transcript of April 6, 1977, p. 16):[2]

THE COURT:

> Well, on page 7 of their opinion they deal directly with that question, and I don't believe it can be considered as obiter dictum. It couldn't be any more direct than starting with the — two-thirds up the way of the page where they say in the trial court, and going on down to the bottom of the page, and it spells it out pretty

[2]Presently pending again in federal court is another action brought by the appellants on the Contract Clause claim *after* the decision of the Florida Supreme Court. *Daytona Beach Racing & Recreational Facilities District v. County of Volusia*, No. 77-99-ORL-CIV-4. Motions to dismiss based on the Tax Injunction Act have again been filed and are pending.

> clear to me that they ruled on that question. And they, in effect, have precluded any further consideration by this Court of that, and they precluded you from litigating that question in this Court. And, of course, they then reversed it with instructions to have further proceedings consistent with their opinion. So I don't believe that I have any discretion left in the matter in that regard.

And, on April 28, 1977, on the basis of this understanding, the Circuit Judge entered an order granting the appellees' motion for partial summary judgment (Appendix H, 22a-23a, *infra*). The order said, in pertinent part (p. 23a, *infra*):

> The defendants' motion for summary judgment is granted as to the plaintiffs' claims that the leasehold interest of International Speedway Corporation, is exempt, immune, or otherwise not subject and liable to ad valorem taxation for the year 1974, and with respect to said issues, partial summary judgment is hereby entered in favor of defendants.

THE QUESTIONS ARE SUBSTANTIAL

1. This is a classic instance in which a State promised permanent tax exemption, through a formally enacted statute, in order to encourage enormous capital investment for a project that would serve a substantial public purpose. After the money was expended in reliance on the State's promise, the State pulled the rug out from under the investor by blithely repudiating its earlier promise. The sorry justification given by the legislature for this obviously inequitable conduct — which would never be tolerated on the part of a prviate contracting party — is that there has been "ever-increasing cost of government in Volusia County"

which "requires that additional funds be derived from taxation of property in the county" (p. 3, *supra*). And the only reason stated by the Supreme Court of Florida in support of its approval of such high-handed conduct is that the legislature had "unquestioned authority to repeal prior tax exemption statutes."

Such legislative authority is by no means "unquestioned," as might have been demonstrated to the Supreme Court of Florida had it provided the appellants with an opportunity to brief and argue this constitutional issue. This Court recently observed in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977), that the consistent line of judicial authority is precisely to the contrary (97 S. Ct. at 1518-19 n. 21; citation omitted):

> In *New Jersey v. Wilson*, 7 Cranch 164 (1812), the Court held that a State could properly grant a permanent tax exemption and that the Contract Clause prohibited any impairment of such an agreement. This holding has never been repudiated, although tax exemption contracts generally have not received a sympathetic construction.

Most of the considerations which this Court found persuasive in support of the Contract Clause challenge in the *United States Trust Co.* case apply to this case as well. Here, as in *United States Trust Co.*, the limitation upon the State relates not to its police power or power of eminent domain, but merely to the area of "financial obligations," the taxing and spending power. Thus, the state's obligation here does not fall within the reserved powers of a state that cannot be contracted away. 97 S. Ct. at 1519.

Nor does this case involve any "emergency" situation of the kind presented by *Home Building & Loan Ass'n*

v. Blaisdell, 290 U.S. 398 (1934), which was thoroughly discussed and distinguished in the *United States Trust Co.* opinion. 97 S. Ct. at 1514, 1518. Rather, this case involves a straightforward "destruction of contract" such as the Court in *Blaisdell* stated would be barred by the Contract Clause. 290 U.S. at 439. In this case, the state justified its action by the desire for additional funds. As this Court observed in *United States Trust Co.*, however, the fact that a state might prefer to have higher revenues and lower expenditures does not justify an impairment of contract (97 S. Ct. at 1520):

> A governmental entity can always find a use for extra money. . . . If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

And finally, this is not a situation in which the State's actions result in only minor modification or insignificant impairment of the obligation that had previously been undertaken. In this case, the original promise – tax exemption – is "totally destroyed," and the 1973 repeal subjects the appellants' property to the same tax liability that applies to property developed without a promise of tax exemption.

What makes this case most compelling, however, is the fact that the State's contractual promise – directed specifically to this project – was a major incentive for the initial construction of the speedway. This is not, in other words, a situation in which an ongoing business concern or an entire industry secures permanently favorable treatment from a single session of a legislature in which it is particularly influential. In such a case, there are sound reasons of policy not to prevent later legislatures from re-examining an extraordinary tax

benefit which one legislative session may have conferred. But when the necessary price of obtaining a unique facility that public officials have determined serves a public purpose is to promise permanent tax exemption, it is a particularly flagrant violation of the principles underlying the Contract Clause to permit a later legislature to keep the public benefits of the facility while repudiating the promise that initially gave it life.[3]

2. Although the Supreme Court of Florida remanded the case for further proceedings, its concluding paragraph has been read by the trial court as an authoritative disposition on the Contract Clause issue. See pp. 8-9, *supra,* and Appendix H, pp. 22a-23a, *infra.* Consequently, so far as the federal constitutional claim is concerned, the Florida courts are treating it as having been decided, finally and irreversibly – except, of course, by this Court – by the Supreme Court of Florida's decision of November 1976.

On this basis, it is clear that the opinion of the Supreme Court of Florida meets the "final judgment or decree" standard of 28 U.S.C. §1257(2). See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476-487

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[3]The Supreme Court of Florida apparently misunderstood the "contractual right" argument, believing that the appellants were basing their claim on a contract with the City of Daytona Beach. It then asserted that the city was "without authority to bind the legislature" (p. 8a, *infra*). We do not, of course, argue that the City "bound" the Legislature. We maintain that the Legislature bound *itself*, within the meaning of the Contract Clause, when it enacted Section 13 of the 1955 law, and that the Legislature was not constitutionally permitted to impair *its own contract* by repudiating it with the 1973 repealer. Therefore, most of the discussion in the concluding paragraph of the court's opinion – indeed, all of it apart from the quotation from *Straughn v. Camp* – is without relevance to appellants' attack on the statute.

(1975); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 159-164 (1973); *Mills v. Alabama*, 384 U.S. 214, 217-218 (1966).

3. The important constitutional issue is, we believe, presented squarely enough by the present state of the record that it can be resolved if this case is now set for plenary briefing and argument. We recognize, however, that the considerations spelled out by this Court's opinion in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977), were not before the Supreme Court of Florida when it considered this appeal and when it issued the opinion of which we are now seeking review.

In light of this Court's intervening decision – which the dissenters in *United States Trust Co.* believed to be a "revival of the Contract Clause" – this Court might deem it appropriate to vacate the decision of the Supreme Court of Florida and remand the case for reconsideration in light of *United States Trust Co. v. New Jersey.*

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted and this case set for oral argument. Alternatively, the judgment below should be vacated and the case remanded for reconsideration in light of the intervening *United States Trust Co.* decision.

Respectfully submitted,

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach,
Florida 32018

Attorneys for International Speedway Corporation

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 191
Daytona Beach,
Florida 32015

Attorney for Daytona Beach Racing and Recreational Facilities District

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF FLORIDA
JULY TERM, 1976

CASE NO. 49,115

Circuit Court
Case No. 74-2861-01 Div.

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Appellants,

v.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Appellees.

Opinion filed November 4, 1976

An Appeal from the Circuit Court in and for Volusia County, E. L. Eastmoore, Judge

William M. Barr of Raymond, Wilson, Conway, Barr and Burrows, for Volusia County; and Robert L. Shevin,

Attorney General; and David M. Hudson, Assistant Attorney General, for J. Edward Straughn, Appellants Thomas T. Cobb of Cobb, Cole, Sigerson, McCoy, Bell and Bond, for Daytona Beach Racing and Recreational Facilities District; and S. LaRue Williams of Kinsey, Vincent, Pyle and Williams, for International Speedway Corporation, Appellees

HATCHETT, J.

This is the latest in a long series of lawsuits marking the history of the Daytona International Speedway, and beginning even before the racetrack was built. In 1955, by special act,[1] the legislature created appellee Daytona Beach Racing and Recreational Facilities District (the District). The District leased 374 acres of land from the City of Daytona Beach and subsequently acquired an

[1]Chapter 31343, Laws of Florida 1955 (repealing Chapter 29590, Laws of Florida 1953). Section 13 of this special act provides:

> Exemption from Taxation. – As the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein, and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District, and as the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, and as the racing and recreational facilities will constitute public property used for public purposes, no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom and any bonds issued under the provisions of this Act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the state.

additional 74 acres in fee simple. The original plan was to finance construction of a racetrack on this land by means of revenue bonds. The circuit court entered a decree validating the proposed bonds and this Court affirmed the decree on appeal, 89 So.2d 34 (Fla. 1956), but the bonds were never issued. Instead the District leased all 448 acres to appellee International Speedway Corporation (the Corporation), which undertook to construct a racetrack facility at its own expense, as the principal consideration for the leasehold.

In 1960 and 1961, the Volusia County Tax Assessor assessed the city-owned portion of the land, which was leased by the Corporation from the District, as nonexempt realty. The Corporation, the District, and the City of Daytona Beach sued to enjoin collection of this tax. The trial court's dismissal of their complaint was affirmed by the District Court of Appeal, First District, *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 157 So.2d 156 (Fla. 1st DCA 1963), but this Court quashed that decision in an opinion reported at 179 So.2d 349 (1965). On remand, the plaintiffs prevailed and the judgment of the trial court was affirmed. *Paul v. Daytona Beach Racing & Rec. Fac. Dist.*, 208 So.2d 653 (Fla. 1st DCA 1968) *cert. den.* 224 So.2d 299 (Fla. 1969).

Before the present litigation began, the City of Daytona Beach conveyed to Volusia County its interest in the land leased to the District. The people of Florida adopted a new Constitution effective January 1, 1969. The legislature enacted the Tax Reform Act,[2] now

[2]Chapter 71-133, Laws of Florida. Section 14 of the Tax Reform Act has not been codified in Florida Statutes. In pertinent part, Chapter 71-133, §14, Laws of Florida, provides:

> All special and local acts or general acts of local application granting specific exemption from property

[footnote continued]

codified for the most part in Chapter 196, Florida Statutes; and thereafter enacted Chapter 73-647, Laws of Florida.[3] In light of these developments, appellant Tax Assessor of Volusia County assessed the Corporation's leasehold as nonexempt property, whereupon the District and the Corporation filed suit against Volusia County, the tax assessor, the tax collector and the executive director of the department of revenue. The trial court entered judgment for the plaintiffs, enjoining the "assessing, levying or attempting to collect ad valorem taxes on the leasehold." Appeal was taken to the District Court of Appeal, First District, and transferred here. Because the trial court "initially and directly pass[ed] on the validity of a state statute [Chapter 73-647, Laws of Florida]," Article V, Section 3(b)(1), we have jurisdiction.

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taxation are hereby repealed to the extent that such exemption is granted. . . .

[3]Chapter 73-647 provides, as follows:

WHEREAS, facilities of the Daytona Beach racing and recreational facilities district have been exempt from taxation and assessment, and

WHEREAS, the ever-increasing cost of government in Volusia County requires that additional funds be derived from taxation of property in the county, and

WHEREAS, the removal of such exemption will result in certain facilities in Volusia County providing their pro rate share of the cost of government, and

WHEREAS, the legislation intends that any facilities of said district be taxed in the same manner as any other property in Volusia County, NOW THEREFORE

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 13 of chapter 31343, Laws of Florida, 1955, is hereby repealed.

Section 2. This act shall take effect January 1, 1974.

The trial court ruled that Chapter 31343, Laws of Florida 1955, operates to exempt the District's leasehold from ad valorem taxation, notwithstanding the legislature's subsequently expressed intention "that any facilities of said district be taxed in the same manner as any other property in Volusia County." Chapter 73-647, Laws of Florida. Even if this grudging interpretation[4] of the specific repealer could be sustained, the trial court's judgment is incompatible with the general repealer embodied in Chapter 71-133 §14, Laws of Florida. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). In light of the repealer statutes and other substantial changes in Florida law since the District's tax exempt status was first litigated, the earlier decisions are not determinative of the present

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[4]The trial court summed up its reasoning in these words:

> In this case the Legislature saw fit to repeal the specific grant of a tax exemption, but did not repeal the declaration of public purpose. If the Legislature does not repeal the public purpose declaration as set forth in Chapter 31343 and which has been upheld as a valid declaration by the Supreme Court of Florida, there can then be no ad valorem taxation of the leasehold interest of the Plaintiffs' property. Chapter 73-647, Laws of Florida is therefore void insofar as it is used to provide the basis for the assessment and levy of ad valorem taxation of the property owned by Plaintiff, Daytona Beach Racing and Recreational Facilities District, or leased by it to Plaintiff, International Speedway Corporation.

The Court rejected precisely these arguments in *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974), in holding that the leaseholds involved there were not exempt from ad valorem taxation. The dissent protested in vain that "while the Legislature has eliminated the tax exemptions . . . *it did not repeal* . . . [the] *declar[ation] that the development . . . was a public purpose*" and that this Court had previously considered "the validity of this legislative declaration of public purpose and expressly upheld it." At 696 (McCain, J., dissenting).

controversy. *Straughn v. Camp, supra; Wagner v. Baron*, 64 So.2d 267 (Fla. 1953). We are concerned here, moreover, with a leasehold and not with a fee simple interest in real estate.

The Constitution of 1885 provided that property owned by corporations "shall be subject to taxation unless . . . used exclusively for religious, scientific, municipal, educational, literary, or charitable purposes." Article 16, Section 16, Florida Constitution 1885. The phrase "municipal . . . purposes" was broadly interpreted to include any "public" purpose; under the Constitution of 1885, this Court decided that simply holding a proprietary interest in "a community recreational asset and business stimulant," *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 179 So.2d 349, 353 (Fla. 1965), like the speedway served a "municipal purpose." *Id.* Perceiving decisions of this kind as creating inequities in the tax structure, the draftsmen of the Constitution of 1968 limited the municipal purpose exemption to "property owned by a municipality and used exclusively by it for municipal or public purposes." Article VII, Section 3(a), Florida Constitution 1968. The present Constitution further provides that where any project financed by revenue bonds "is occupied or operated by any private corporation . . . pursuant to . . . lease . . . the property interest created by such . . . lease shall be subject to taxation to the same extent as other privately owned property." Article VII, Section 10(c), Florida Constitution 1968. Paralleling this constitutional provision, Section 196.001, Florida Statutes (1975) makes "[a]ll leasehold interests in property . . . of the state, or any political subdivision, municipality, agency, authority, or other

public body corporate of the state" subject to taxation unless otherwise exempted.[5]

Other statutory provisions exempt privately held leaseholds of governmental property from taxation "only when the lessee," Section 196.199(2)(a), Florida Statutes (1975), "is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or . . . which would otherwise be a valid subject for the allocation of public funds." Section 196.012(5), Florida Statutes (1975). The lessee in the present case does not serve a governmental purpose. The Corporation's operation of the speedway "is purely proprietary and for profit." *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975) (reh. den. 1976). The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." *Straughn v. Camp, supra*, at 689.

The burden is on the claimant to show clearly any entitlement to tax exemption. "The rule is that all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them. *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So.2d 381 (Fla. 1958)." *Williams v. Jones, supra*, at 435. Mr. Justice Sundberg, writing for the Court in *Williams v. Jones, supra*, delineated the scope of the exemption at issue here in the following words:

---

[5]Section 196.001, Florida Statutes (1975) supersedes the statutory provisions considered in *Dade County v. Pan American World Airways, Inc.*, 275 So.2d 505 (Fla. 1973).

> The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either *directly* or *indirectly* through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates. At 433.

Operating an automobile racetrack for profit is not even arguably the performance of a "governmental-governmental" function.

In the trial court, appellees also maintained that their leasehold enjoyed tax exempt status as a matter of contractual right. This position does not square with the rule that "a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes." *Straughn v. Camp, supra*, at 694. But appellees do not even claim that the legislature entered into a contract, only that the City of Daytona Beach agreed to

> levy no tax upon the improvements constructed by the [District] or upon the leasehold estate . . . created [by the lease between the City and the District], so long as the same is held by . . . [a] public body.

The City of Daytona Beach is without authority to bind the legislature, and the lease between the City and the District evinces no attempt to exercise such authority *ultra vires*. The leasehold adverted to in appellees' complaint, moreover, was created by the lease between the City of Daytona Beach as lessor and the District as lessee. On the other hand, the leasehold

which has been assessed as nonexempt was created by the lease between the District as lessor and the Corporation as lessee. Finally, a privately held corporation organized and operated for its stockholders' profits is not a "public body" within the meaning of the agreement between the City and the District.

The judgment is reversed and the cause is remanded for further proceedings consistent with this opinion.

OVERTON, C. J., BOYD and ENGLAND, JJ., Concur

ROBERTS and ADKINS, JJ., Dissent

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
WEDNESDAY, FEBRUARY 9, 1977

CASE NO. 49,115

VOLUSIA COUNTY, ETC., ET AL.,

Appellants,

vs.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, ETC., ET AL.,

Appellees.

On consideration of the Petition for Rehearing filed by appellees and Reply thereto, it is ordered that said petition is denied.

OVERTON, C. J., BOYD, ENGLAND, AND HATCHETT, JJ., CONCUR

ADKINS, J., AND ROBERTS, RET. J., DISSENT

APPENDIX C

IN THE CIRCUIT COURT FOR
VOLUSIA COUNTY, FLORIDA

CASE NO. 74-2861-01
Division B

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Plaintiffs,

vs.

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Daytona Beach Racing and Recreational Facilities District and International Speedway Corporation, Plaintiffs in the above-captioned case, hereby appeal to the Supreme Court of the United

States from the judgment of the Supreme Court of the State of Florida, issued pursuant to the denial of Plaintiffs' Petition for Rehearing entered on February 7, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

COBB, COLE, SIGERSON, McCoy,
BELL, BOND, MONACO & KANEY
Post Office Box 191
Daytona Beach, Florida 32018
Telephone: (904) 255-8171
Attorneys for Plaintiffs,
Daytona Beach Racing and
Recreational Facilities District

Nathan Lewin and
Jamie S. Gorelick of
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
Telephone: (202) 293-6400

and

KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32108
Telephone: (904) 252-1561
Attorneys for Plaintiffs,
International Speedway Corporation

By /s/
Thomas T. Cobb

Dated: May 5, 1977 [Filed May 6, 1977]

[Certificate of Service Omitted in Printing]

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

CASE NO. 49,115

Circuit Court
Case No. 74-2861-01
Division B

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Appellants,

v.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Daytona Beach Racing and Recreational Facilities District and International

Speedway Corporation, Appellees in the above-captioned case, hereby appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Florida, issued pursuant to the denial of Appellees' Petition for Rehearing entered on February 7, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

COBB, COLE, SIGERSON, McCOY,
BELL, BOND, MONACO & KANEY
Post Office Box 191
Daytona Beach, Florida 32018
Telephone: (904) 255-8171
Attorneys for Plaintiffs,
Daytona Beach Racing and
Recreational Facilities District

By /s/ Thomas T. Cobb
Thomas T. Cobb

Nathan Lewin and
Jamie S. Gorelick of
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
Telephone: (202) 293-6400

and

KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32018
Telephone: (904) 252-1561
Attorneys for Appellee,
International Speedway Corporation

By /s/ S. LaRue Williams
S. LaRue Williams

Dated: May 5, 1977

[Certificate of Service Omitted in Printing]

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-915

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, ETC., ET AL.,

Appellants,

v.

VOLUSIA COUNTY, ETC., ET AL.

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including June 9, 1977.

/s/ Lewis F. Powell

Associate Justice of the Supreme
Court of the United States

Dated this 9th day of May, 1977

APPENDIX F

IN THE CIRCUIT COURT OF FLORIDA,
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR VOLUSIA COUNTY

CASE NO. 74-2861-01 B

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Plaintiff,

vs.

VOLUSIA COUNTY, a political subdivision of the State of Florida; ROBERT BOLIN, as Tax Assessor of Volusia County, Florida; ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Defendants.

SUMMARY FINAL JUDGMENT

THIS CAUSE was considered by the Court upon motions by all parties for Summary Judgment, everyone agreeing that there are no facts in dispute.

Briefly stated, the history of the "Speedway", insofar as it is pertinent to this litigation is: In 1953 the Legislature adopted Chapters 29590 and 29583, Laws of Florida, and created the Daytona Beach Racing and Recreational District. In 1955 the Legislature adopted Chapter 31343, Laws of Florida, which declared, *inter alia*, in Section 13 thereof, "... the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, ..." That same section granted a specific exemption from taxes and assessments. In addition, Section 17 of Chapter 31343 declared "... the exercises of such powers or any of them, constitute and are proper public purposes and are for the welfare and benefit of the District and its inhabitants."

In the case of *Daytona Beach Racing and Recreational Facilities District v. Paul*, 179 So.2d 349 (1965) the Florida Supreme Court upheld the question of the legislative determination of public purpose and the legislative grant of the tax exemption.

In 1973 the Legislature, by the passage of Chapter 73-647, repealed Section 13 of Chapter 31343, as quoted above, and which Defendants maintain took away the tax exemption previously granted.

Plaintiff's brought this action and seek to declare Chapter 73-647, Laws of Florida, unconstitutional as a law impairing the obligation of contract. Plaintiffs further seek to enjoin the Defendants from levying and collecting any taxes.

Defendants contend that the legislative repeal of the tax exemption is effective and that the leasehold interest of the Plaintiffs is subject to ad valorem taxes.

In 1968 the Constitution of Florida was revised and in Article VII, Section 3(a) provides:

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation . . .

Subsequent thereto, the Legislature adopted several statutes of a general nature, among which is found Section 196.199(2), Florida Statutes, which provides that leasehold interests created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state, shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal or public purpose or function.

This Court does not deem it necessary to rule on the question of the impairment of contract argument to reach its decision.

In this case the Legislature saw fit to repeal the specific grant of a tax exemption, but did not repeal the declaration of public purpose. If the Legislature does not repeal the public purpose declaration as set forth in Chapter 31343 and which has been upheld as a valid declaration by the Supreme Court of Florida, there can then be no ad valorem taxation of the leasehold interest of the Plaintiffs' property. Chapter 73-647, Laws of Florida is therefore void insofar as it is used to provide the basis for the assessment and levy of ad valorem taxation of the property owned by Plaintiff, Daytona Beach Racing and Recreational Facilities District, or leased by it to Plaintiff, International Speedway Corporation.

It is not for the Courts to usurp the legislative right to establish what is or is not a subject of public purpose. That matter must be resolved in the Legislature. Until that declaration of public purpose is

repealed expressly, however, no taxes can be levied or collected against these Plaintiffs.

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion for Summary Judgment is granted, and the Defendants and each of them are permanently enjoined and restrained from assessing, levying or attempting to collect ad valorem taxes on the leasehold properties which are the subject of this litigation.

DONE AND ORDERED in Chambers, Courthouse, Palatka, Putnam County, Florida, this 17th day of October 1975.

/s/ E. L. Eastmoore
CIRCUIT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 74-267-Orl-Civ-Y

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES DISTRICT,
et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, et al.,

Defendants.

ORDER

This cause came on before the Court for a hearing on the motion of all the defendants, County of Volusia, Robert Bolin, Robert D. Summers, and J. Ed Straughn, to dismiss the complaint. The undisputed facts are that the plaintiffs seek to challenge in this court on federal constitutional claims the action of the Legislature of Florida in terminating a previously enacted tax exemption granted to the plaintiffs.[1]

---

[1]Section 13 of Florida Statutes, Chapter 31343, enacted in 1955 provided that no taxes or assessments were to be levied upon any of the racing and recreational facilities that were constructed pursuant to the Act. In 1973, Fla. Statutes Chapter 31-647 was enacted which repealed Section 13 of Chapter 31343, Laws of Florida, 1955, thus eliminating plaintiffs' tax exempt status.

The plaintiffs have also filed in the State Courts of Florida a challenge to the same statute eliminating their tax exemption based upon alleged state grounds. The defendants contend that Section 1341, Title 28 United States Code, precludes this Court from considering this case and that plaintiffs must look to the State Courts for relief, including the federal constitutional grounds raised by them.

In view of *Great Lakes Dredge & Dock Company v. C. C. Huffman*, 319 U.S. 293, 87 L. Ed. 1407 (1943) and *Bland v. McHann*, 463 F.2d 21 (5th Cir., 1972), the position of the defendants appears to have merit in that this Court finds that the plaintiffs have a "plain, speedy, and efficient remedy" in the state courts.[2] 28 United States Code §1341.

The plaintiffs presented the ingenuous argument that, based on cases not involving state taxes, this court should retain jurisdiction of this case so as to permit the plaintiffs to litigate in the state courts only their state claims and then, if unsuccessful, to pursue for the first time their federal claims in this court.

While such a procedure has been authorized for non-state tax issues, it is not the procedure specifically approved in state tax matters. It is, therefore

ORDERED that the motion to dismiss be and is hereby granted and this case is dismissed.

DONE AND ORDERED in Chambers at Orlando, Florida, this 7th day of November, 1974.

/s/ George C. Young
CHIEF JUDGE

---

[2]FSA §194.171, the predecessor to which the Fifth Circuit has found satisfied the requirements of 28 U.S.C. §1341. *Carson v. City of Ft. Lauderdale*, 293 F.2d 337 (5th Cir., 1961).

APPENDIX H

IN THE CIRCUIT COURT, IN AND
FOR VOLUSIA COUNTY, FLORIDA.

CIVIL ACTION NO. 74-2861-01
DIVISION B

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, et al.,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR STAY AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PART

This action came on for hearing on the motion of plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for a stay, and on defendants' motion for summary judgment in their favor. Upon consideration of the record of this cause and the arguments of counsel, it is

ORDERED as follows:

1. The motion of plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for a stay of this action, is denied.

2. The defendants' motion for summary judgment is granted as to the plaintiffs' claims that the leasehold interest of International Speedway Corporation, is exempt, immune, or otherwise not subject and liable to ad valorem taxation for the year 1974, and with respect to said issues, partial summary judgment is hereby entered in favor of defendants.

3. The Court finds that plaintiffs' amended complaint states a claim disputing and objecting to the manner and amount of the assessment of the plaintiff's leasehold for 1974, and that there is a genuine issue of material fact as to that issue. Accordingly, with respect to the issue of the manner and amount of the assessment of the leasehold of the plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for the year 1974, defendants' motion for summary judgment is denied.

DONE and ORDERED in Palatka, Florida, this 28th day of April, 1977.

/s/ E. L. Eastmoore
CIRCUIT JUDGE

Supreme Court, U. S.
FILED
JUL 7 1977
MICHAEL RODAK, JR., CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

NO. 76-1759

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

WILLIAM M. BARR
Raymond, Wilson, Conway, Barr and Burrows
P. O. Box 5725
Daytona Beach, Florida 32018

Attorneys for Appellees, Volusia County, etc.; James Bailey, as Tax Assessor, etc., and Robert D. Summers, as Tax Collector, etc.

ROBERT L. SHEVIN
Attorney General

WILLIAM C. SHERRILL JR., Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

Attorney for Appellee, Harry L. Coe, Jr., Executive Director, Department of Revenue, State of Florida

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16, Appellees move the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Supreme Court of Florida, on the grounds that the judgment rests on an adequate non-federal basis and does not present a substantial federal question.

I.

STATUTES INVOLVED

Appellants challenge the validity of Chapter 73-647, Laws of Florida (1973), which repealed a 1955 tax exemption statute, Section 13 of Chapter 31343, Laws of Florida (1955).

Both the 1955 exemption law (Chapter 31343) and the 1973 repealer (Chapter 73-647) were enacted by the Florida Legislature as Special Acts.

The tax exemption contained in Chapter 31343 was also repealed by General Law in 1971. Section 14 of Chapter 71-133, Laws of Florida (1971), known as the 1971 Tax Reform Act, provides in pertinent part:

> "All special and local acts or general acts of local application granting specific exemption from property taxation are

hereby repealed to the extent that such exemption is granted ...."

II.

STATEMENT

This is the third appeal filed in this Court by Florida taxpayers who object to the elimination of tax exemptions by the enactment of the 1971 Tax Reform Act. That act, enacted as Chapter 71-133, Laws of Florida (1971), and largely codified in Chapter 196 of the Florida Statutes, was a comprehensive revision of Florida's ad valorem tax laws.

The Tax Reform Act severely curtailed the tax exemptions that had been enjoyed by private lessees of Florida lands owned by state and local government agencies. Such exemptions were eliminated by (1) Section 14 of Chapter 71-133, which repealed all Special Act tax exemptions and (2) Section 196.001 (2), Florida Statutes, which subjects the leaseholds of private lessees of government-owned lands to ad valorem taxation.

In two cases prior to this one, private lessees of government-owned lands on Santa Rosa Island, in Escambia County, Florida, challenged the elimination of a tax exemption created by a 1949 Special Act, Chapter 25,810, Laws

of Florida (1949). In both Escambia County cases, the Supreme Court of Florida affirmed the taxability of the plaintiffs' leaseholds. Straughn v. Camp, 293 So.2d 689 (Fla. 1974); Williams v. Jones, 326 So.2d 425 (Fla. 1976).

Appeals to this Court were taken in both Escambia County cases. Both appeals were dismissed for want of a substantial federal question. Camp v. Straughn, 419 U.S. 891 (1974); Williams v. Jones, No. 75-1735, ___U.S.___ (Oct. 4, 1976) In Williams, appellants asserted that the sections of the Tax Reform Act which subjected their leaseholds to taxation denied them equal protection of the laws. The Camp appeal was virtually identical to this one. Appellants there contended that by eliminating their Special Act tax exemption, Section 14 of Chapter 71-133 impaired contract obligations in violation of Section 10, Article I of the United States Constitution.

III.

A.

ARGUMENT

The judgment of the Florida Supreme Court rests on an adequate non-federal basis.

Appellants' characterization of the 1955 statutory tax exemption as "permanent" is contrary to Florida law.

In the judgment appealed from, the Supreme Court of Florida said:

> "In the trial court, appellees also maintained that their leasehold enjoyed tax exempt status as a matter of contractual right. This position does not square with the rule that 'a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes.'"

In support of this conclusion, the Court cited its decision in the first Escambia County case, Straughn v. Camp, 293 So.2d 689 (Fla. 1974). Noting several changes in Florida legislative policy concerning tax exemptions in recent years, the Court there held that it is "well established that one legislature cannot bind its successors with respect to the exercise of the taxing power . . . ." The Court rejected the view that the statutory tax exemption conferred upon Santa Rose Island properties in 1949 was permanent or perpetual. It said:

> "Merely because plaintiffs' (appellees') leaseholds were originally granted tax exemption and they enjoyed exempt status for a number of years, affords no basis for forever removing and completely immunizing them from taxation . . . . Such exempt status may be changed by a subsequent legislature."

In support of this conclusion, the Court cited its 1965 decision in which it had affirmed the validity of Section 13, Chapter 31343, Laws of Florida (1955), the very exemption statute relied upon by appellants here. Daytona Beach Racing and Recreational Facilities District v. Paul, 179 So.2d 349 (Fla. 1965). That decision judicially sanctioned the exempt status of appellants' racetrack for many years prior to the enactment of the 1971 Tax Reform Act. In adjudging the validity of the exemption under Florida law, the Supreme Court of Florida simultaneously ruled that the exemption was subject to repeal by a future legislature. The Court said:

> "It is axiomatic that a public facility or project declared such by the Legislature and so recognized by the State's highest Court does not lose its tax exempt status where there has been no material change in its public nature or no legislative repeal of its exemption privilege." (Emphases added.)

The Court manifestly viewed the exemption as a special legislative privilege, rather than a contractual obligation. It said:

> "Like the Almighty in all things, the Legislature in certain mundane things 'giveth and taketh away.' Unless and until the Legislature repeals

the tax exemption we hold it must stand." (Emplasis added.)

Appellants' current efforts to thwart the repeal of the exemption by attributing a "permanent" nature to it, are contrary to the authoritative pronouncements of the Supreme Court of Florida which sanctioned the exemption and defined its attributes in the first place.

Although this Court is required to reach an independent judgment as to the existence and nature of the alleged contract, it nevertheless gives great weight to the views of the highest court of the State touching these matters. Dodge v. Board of Education, 302 U.S. 74, 79 (1937). Under Florida law, the tax exemption statute in question clearly is not in the nature of a contract but is merely a legislative privilege subject to repeal by a future legislature. The judgment appealed from rests on an adequate non-federal basis and should therefore be dismissed.

B.

This appeal presents no substantial federal question warranting review by this Court.

Appellants assume that which they must prove: That a contract exists. They argue that contractual obligations have been impaired, but fail to show that a contract was ever made. The

essential facts alleged by appellants are:

a. In 1955, the Florida Legislature enacted Chapter 31343, Laws of Florida (1955), which created the Appellant District. Section 13 of the Special Act provided that "no taxes or assessments shall be levied upon" facilities acquired or constructed in accordance with the Act.

b. In 1955, the Appellant District leased lands from the City of Daytona Beach, Florida.

c. In 1957, the Appellant District sub-leased the lands to the Appellant International Speedway Corporation, which agreed to construct racetrack facilities thereon.

d. In 1958 and 1959, Appellant International Speedway Corporation constructed the racetrack facility at its own expense. (No bonds of any kind were ever issued.)

At no time was any contract made for a perpetual and irrevocable tax exemption. Section 13 of the 1955 Special Act contains no promissory or contractual language of any kind. It does not specify that the tax exemption is permanent. It makes no reference to

the District's future lessee, International Speedway Corporation.

A contract to grant a permanent or perpetual tax exemption must be express; it cannot be created by implication or presumption. Providence Bank v. Billings, 29 U.S. (4 Pet.) 514 (1830). Christ Church v. County of Philadelphia, 65 U.S. (24 How.) 300 (1861). Such a contract must be shown to exist and where it does exist it is never permitted to extend in scope or duration beyond what its terms clearly require. Tucker v. Ferguson, 89 U.S. (22 Wall.) 527, 574 (1875). Here, as in Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 386 (1903), the Legislature merely used words which may have held out a hope, but did not amount to a covenant. As Justice Holmes there said:

> "The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenues and public improvement. In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore, it makes no promise to them. It simply indicates a course of conduct to be pursued until circumstances or its views of policy change. It would be quite intolerable if

> parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law."

Exemptions from taxation must be "clear and unmistakable" and any doubt or ambiguity must be resolved in favor of the public. New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 590-594 (1938). See Dodge v. Board of Education, 302 U.S. 74, 78-79 (1937).

The above cases demonstrate conclusively that the tax exemption granted in Section 13 of the 1955 Special Act is not in the nature of a contract and that the exemption cannot be deemed to be permanent by implication.

Appellants' reliance on this Court's recent decision in United States Trust Co. v. New Jersey, 97 S.Ct. 1505 (1977), is misplaced. That case involved a clear and explicit contract with the States' bondholders. As this Court said:

> "In this case the obligation was itself created by a statute, the 1962 legislative covenant. It is unnecessary, however, to dwell on the criteria for determining whether state legislation gives rise to a contractual obligation. The trial court found

> . . . and appellees do not deny, that the 1962 covenant constituted a contract between the two States and the holders of the Consolidated Bonds issued between 1962 and the 1973 prospective repeal. The intent to make a contract is clear from the statutory language . . . ." (Emphasis added.)

Here, the intent to make a contract is totally absent from the statute. Moreover, in this case no bonds were ever issued and no funds were ever borrowed by the State or any public agency.

Similarly, a clear, express contract existed in the case of New Jersey v. Wilson, 11 U.S. (7 Cranch) 164 (1812). Referring to New Jersey v. Wilson, this Court said in Providence Bank v. Billings, 29 U.S, (4 Pet.) 514, 563 (1830), "[I]n that case the stipulation exempting the land from taxation was made in express words.

The 1955 Special Act did not constitute a contract with the Appellant District. As a public agency created by the Legislature, the District does not stand in a contractual relationship with the State and the 1955 Special Act which created it is not in the nature of a contract. See City of Trenton v. State of New Jersey, 262 U.S. 182 (1923); East Hartford v. Hartford Bridge Co., 51 U.S. (10 How.) 511, 534-536 (1850). Municipal corporations and other political

agencies of the State are subject to the control and supervision of the Legislature. As stated in Hunter v. Pittsburgh, 207 U.S. 161, 178-179 (1907):

> "The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. (Emphasis added.)

This case is factually and legally indistinguishable from the case of Straughn v. Camp, 293 So.2d 689 (Fla. 1974), appeal dismissed, 419 U.S. 891 (1974). In that case, the taxpayer-lessees advanced the same impairment of contract argument against the 1971 Tax Reform Act which appellants repeat here. The Camp appeal was dismissed for want of a substantial federal question and this appeal should be likewise dismissed. See the Supreme Court of Florida's decision in Straughn v. Camp, 293 So.2d 689 (Fla. 1974), for the facts and statutes considered in that case. The language of the Special Act tax exemptions in both cases is remarkably similar. In the Camp case, the exemption statute provided:

> "Section 2. All of the real and personal property owned, controlled or used by Escambia County, Florida, or Santa Rosa Island Authority under or by virtue of said Chapter 24,500, Laws of Florida, Acts of 1947, or for any of the purposes thereof, including real and personal property rented or leased to others by said county or said Santa Rosa Island Authority, shall be exempt from state, county, municipal and all other ad valorem taxes of every kind." (Emphasis added.)

The exemption statute in this case provides that "no taxes or assessments shall be levied upon" facilities acquired or constructed in accordance with the act. Neither the statute in this case, nor the one in the Camp case, contains any language whatsoever expressing a contractual promise to grant a permanent tax exemption.

CONCLUSION

The judgment of the Supreme Court of Florida rests on an adequate non-federal basis and this appeal presents no substantial question. The appeal should be dismissed for want of a substantial federal question on authority of Camp v. Straughn, 419 U.S. 891 (1974).

Respectfully submitted

ROBERT L. SHEVIN
Attorney General

William C. Sherrill, Jr.

WILLIAM C. SHERRILL, JR.
Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

William M. Barr

WILLIAM M. BARR
Raymond, Wilson, Conway, Barr
and Burrows
P. O. Box 5725
Daytona Beach, Florida 32018

Attorneys for Appellees

CERTIFICATE OF SERVICE

I, William C. Sherrill, Jr., a member of the Bar of the Supreme Court of the United States, and of counsel for Appellees herein, hereby certify that I have this day served three (3) printed copies of the foregoing Motion to Dismiss or Affirm on the Appellants herein, by depositing same in a United States Post Office with first class postage prepaid addressed to counsel of record for the Appellants as follows:

Nathan Lewin
Miller, Cassidy, Larroca & Lewin
2555 M Street, N.W.
Washington, D. C. 20037

Thomas T. Cobb
Cobb, Cole, McCoy, Abraham, Bell
Bond, Monaco & Kaney
P. O. Box 191
Daytona Beach, Florida 32018

S. LaRue Williams
Kinsey, Vincent, Pyle & Williams
42 South Peninsula Drive
Daytona Beach, Florida 32018

DONE this 6th day of July 1977.

William C Sherrill Jr.

William C. Sherrill, Jr.
Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

Supreme Court, U. S.
FILED
AUG 25 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-1759

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPELLANTS' REPLY MEMORANDUM

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 191
Daytona Beach, Florida 32015

Attorneys for Daytona Beach Racing and Recreational Facilities District

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32018

Attorneys for International Speedway Corporation

Washington, D.C. • THIEL PRESS • (202) 638-4521

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ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPELLANTS' REPLY MEMORANDUM

We file this Reply Memorandum to respond to three erroneous assertions made in the Appellees' Motion To Dismiss or Affirm:

1. *The assertion that the issues have previously come before this Court.*—At pages 2-3 of their Motion, the appellees maintain that two prior cases in which appeals were taken to this Court unsuccessfully challenged "the elimination of tax exemptions by the enactment of the 1971 Tax Reform Act" in Florida, and that this case

raises the same issue. In fact, as is clear from our Jurisdictional Statement, we do not challenge Florida's 1971 Tax Reform Act, because that statute is not the one which eliminated the permanent tax exemption at issue here. This case involves a challenge to the 1973 enactment, which appears at page 3 of our Jurisdictional Statement. That was a law which repealed a *specific* permanent tax exemption, rather than a general tax reform of the kind involved in the 1971 enactment.

Moreover, what the appellees overlook is the intervening decision of this court in *United States Trust Co. v. New Jersey*, 97 S.Ct. 1505 (1977). This most recent decision of this Court directly affects the proper outcome of the present case and requires, at least, that there be a remand of this case for reconsideration by the Supreme Court of Florida.

2. *The assertion that there is an "adequate non-federal basis" for the judgment below.*—At pages 3-6 of their Motion, the appellees argue that the Florida courts have ruled, *as a matter of State law,* that the 1955 tax exemption which is in issue here is not a "permanent" tax exemption. But an examination of the language in the decision of the Supreme Court of Florida in this case and in *Straughn v. Camp,* 293 So.2d 689 (Fla. 1974) demonstrates that the decision of the Florida Supreme Court was not based simply upon State law. In both cases, the Florida court held that a subsequent legislature "has the unquestioned authority to repeal prior tax exemption statutes," and that the legislature "giveth and taketh away." In other words, the purported "State ground" is that the Florida legislature can *never* enact a binding permanent tax exemption that amounts to a Contract under the Constitution's Contract Clause. Plainly, such a "State ground" would totally undermine

the Contract Clause of the United States Constitution.[1] If this Court were to recognize the authority of a State to do away with duly enacted legislation granting permanent tax exemptions on this basis, there would be little vitality to the Court's recent decision in the *United States Trust Co.* case.

3. *The assertion that there was no contract subject to the Contract Clause.*—At pages 6-12 of their Motion, the appellees argue that the 1955 law is not a contract "for a perpetual and irrevocable tax exemption." The statutory language which appears in the 1955 act (pp. 2-3 of the Jurisdictional Statement) proves the contrary.[2] Moreover, that question was never reached by the trial court, and the Supreme Court of Florida decided the question without the benefit of this Court's later decision in the *United States Trust Co.* case and without complete oral argument and full briefing. It was decided, as we have previously noted, on the erroneous premise that any legislative action in the area of tax exemption may be revoked by a subsequent legislature.

The meaning and constitutional significance of the 1955 act is a constitutional question which this Court should now resolve or which should be resolved by the State court in light of federal guidelines, including the *United States Trust Co.* case.

---

[1]If the highest court of a State were to announce such a rule *prospectively,* thereby putting everyone on notice that *future* tax exemptions could not be treated as permanent assurances, such a principle might be viewed as a rule of local law. But that rationale is surely inapplicable when the State's highest court seeks to apply to a 1955 enactment a doctrine announced in 1965.

[2]The statute says that "no taxes or assessments *shall be levied* upon any such racing and recreational facilities . . . and any bonds issued . . . *shall at all times* be free from taxation within the state . . . ." (emphasis added.)

4. *The constitutional rule in Florida now conflicts with the rule in Illinois.* – Since filing our Jurisdictional Statement, we have learned of a very recent decision of the Illinois Appellate Court which concluded that a local statute declaring – as the present one does – that certain property "shall be" exempt from taxation establishes a contract that cannot constitutionally be impaired by a later legislative act. In *Matter of Skidmore v. Illinois State Toll Highway Authority*, Ill. App. No. 75-256 (2d Dist., April 21, 1977), which is reproduced as an Appendix to this Memorandum, the Illinois court held that "the action of the legislature insofar as it imposed taxation upon existing leases under the Toll Highway Act was a law impairing the obligation of contract both as to the Authority and Standard Oil." The Illinois court did not, of course, have to reach the federal constitutional question; it found the repeal of the permanent tax exemption to be a violation of the Illinois' Constitution's impairment-of-contract clause.[3] The conclusion reached by the Illinois court should have been reached here, and the decision of the Florida Supreme Court is, on that account, wholly in error.

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[3] Interestingly enough, the principal case cited by the dissenter in the Illinois court was *Straughn v. Camp, supra.* This demonstrates that there is a basic conflict between the Florida and Illinois courts on the fundamental constitutional issue.

CONCLUSION

For the foregoing reasons probable jurisdiction should be noted and this case set for oral argument. Alternatively, the judgment below should be vacated and the case remanded for reconsideration in light of the intervening *United States Trust Co.* decision.

Respectfully submitted,

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach,
Florida 32018

Attorneys for International Speedway Corporation

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 191
Daytona Beach,
Florida 32015

Attorney for Daytona Beach Racing and Recreational Facilities District

APPENDIX

APPENDIX

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT
FIRST DIVISION

NO. 75-246

IN THE MATTER OF THE APPLICATION
OF ROBERT G. SKIDMORE, COUNTY
COLLECTOR OF LAKE COUNTY, ILLINOIS,

Plaintiff-Appellee,

v.

THE ILLINOIS STATE TOLL HIGHWAY
AUTHORITY, et al.,

Defendant-Appellant.

Appeal from the 19th Judicial Circuit,
Lake County, Illinois.

MR. JUSTICE GUILD delivered the opinion of the court:

On October 26, 1971 the Illinois State Toll Highway Authority (hereinafter referred to as Authority) and the Standard Oil Division of American Oil Company (hereinafter referred to as Standard Oil) filed their objection to judgment being rendered on the application of the County Treasurer and ex officio Collector of Lake County for taxes paid under protest for the year 1970. The property in question was a leasehold for

the oasis on the Authority's property which had been assessed by the County of Lake resulting in a purported tax due of $29,826.40. On February 10, 1972 the circuit court of Lake County found the leasehold interest of Standard Oil to be exempt from taxation under the provisions of Ill.Rev.Stat. 1971, ch. 121, ¶314a43 which read:

> "All property belonging to the Commission, and the said toll highways, shall be exempt from taxation."

The court further entered an injunction permanently enjoining the County Treasurer, County Assessor, County Clerk of Lake County and the State's Attorney of Lake County and their successors in office from collecting or attempting to assess, levy or collect in any manner any general real estate taxes levied on the oasis or any part thereof or any interest therein.

Since the entering of that injunction the language of that section has been carried forward to section 22 of the Toll Highway Act (Ill.Rev.Stat. 1973, ch. 121, ¶100-22.) Section 22 was amended by the legislature effective October 1, 1973 and now reads as follows:

> "Exemption from Taxation.] §22. All property belonging to the Authority, and the toll highways, shall be exempt from taxation. *However, such part of that property as has heretofore been or shall hereafter be leased by the Authority to a private individual, association or corporation for a use which is not exempted from taxation under Section 19 of the Revenue Act of 1939 is subject to taxation as provided in Section 26 of the Revenue Act of 1939, regardless of any provision in such a lease to the contrary.* [Emphasis added.]"

The italicized sentence was added by the legislature by this amendment.

On February 21, 1975 the State's Attorney of Lake County on behalf of the County Treasurer and ex officio County Collector moved the court to vacate the decree of February 10, 1972. On March 4, 1975 the Authority moved to strike and dismiss the motion to vacate the 1972 decree. This motion was denied on March 7, 1975. On March 10, 1975 the State's Attorney of Lake County, on behalf of the County Treasurer and ex officio County Collector, moved the court to amend or modify the injunction order restraining the collection of the taxes as aforesaid so that it would be inoperative after the effective date of the amendment. On March 24, 1975 the circuit court of Lake County entered its order finding that it had continuing jurisdiction as to the permanent injunction of the court and found, in substance, that under the amended provisions of section 22 of the Toll Highway Act that the leasehold property was taxable as any other real estate or property. The court thereupon vacated, terminated and dissolved the permanent injunction enjoining the taxing authorities from collecting taxes from leasehold interest of Standard Oil. The Authority has appealed.

Stated otherwise, the court in its order of March 24, 1975 found that the original injunction was based upon the exemption granted by section 22 of the Toll Highway Act; that section 22 was amended effective October 1, 1973 to no longer exempt leasehold interests unless the use of the leasehold was exempt under section 19 of the Illinois Revenue Act (Ill.Rev. Stat. 1973, ch. 120, ¶500). The court further found that exemption for the use of a leasehold for tollway purposes was not granted by section 19 and concluded

that the Authority property was taxable as to the leasehold interest of Standard Oil.

The first contention of the Authority is that the property in question is State property, that under the Illinois Revenue Act there is a blanket tax exemption to all State property and, therefore, notwithstanding the amendment to section 22, the property is nevertheless exempt. The difficulty with this argument is that in the case before us we are considering a leasehold interest of Standard Oil, not State property. In this connection the record discloses a 25 year lease agreement was entered into by Standard Oil and the Authority on December 20, 1957 which is still in effect and will not expire until 1982. This lease specifically provides that the annual rent paid by the lessee, Standard Oil, will be reduced by an amount equal to any ad valorum taxes which might be levied against the leasehold. This issue was considered by our Supreme Court in *Ill. State Toll Highway Commission v. Korzen* (1965), 32 Ill.2d 338, 205 N.E.2d 433, and reference is made to that decision in which the Supreme Court interpreted the provisions of section 18 of the Toll Highway Act (then Ill.Rev.Stat. 1963, ch. 121, ¶314a43), which read:

> "All property belonging to the Commission, and the said toll highways, shall be exempt from taxation."

In considering the leasehold interest of Standard Oil the Supreme Court stated:

> "We think the General Assembly, in providing that 'all property belonging to the Commission' without regard to its use, shall be exempt from taxation, meant to include the property here in question." 32 Ill.2d at 340, 205 N.E.2d at 434.

The Court, of course, did not consider the amendment to section 22 of the Toll Highway Act. The Court did, however, go on to observe that the service facilities were a part of the tollroad system itself and that,

> "The public purpose in exempting its property from taxation would not be fully recognized if the Commission's authority to provide the services through private agencies were to be burdened by the higher rental which would otherwise result." 32 Ill.2d at 341, 205 N.E.2d at 435.

It can thus be seen that the Supreme Court recognized that under the provisions of the existing lease, and doubtless prospective leases for the operation of the oases, the burden of the taxation on the leasehold interest would be placed upon the Authority itself. And that is what has happened, in this court's opinion, by the amendment to section 22. The legislature may give and the legislature may take away and in the case before us the legislature has, in effect, by the amendment to section 22, taken away the exemption of the leasehold interest of the oases on the Authority property. The burden will, of course, merely be shifted, pursuant to the lease agreement, to the Authority itself. We find it to be clear that the intent of the legislature in amending section 22 was to negate the effect of the decision in *Ill. State Toll Highway Commission v. Korzen, supra.* It is not the function of the judiciary in this case to pass upon the wisdom of the legislature in removing the general tax exemption on the leasehold interests. There being no question that the legislature may take away the tax exempt status of leasehold interests of the Authority as to future leases, we turn to the second contention of the Authority.

The Authority contends that the amendment to section 22 of the Toll Highway Act unconstitutionally

impairs the existing contract between the Authority and Standard Oil by providing that a leasehold interest is not exempt from taxation and is subject to taxation regardless of any provision in such a lease to the contrary. The Authority states that this amendment purports to affect not only leases entered into before the amendment was adopted, but proposes to do so regardless of any provisions in the existing lease to the contrary. The last contention which we will consider together with this issue is that the amendment to section 22 of the Toll Highway Act unconstitutionally impairs the contracts between the State, the Authority and the bondholders of the toll highway. These issues were not raised in the lower court. We, therefore, find ourselves confronted with that line of cases in Illinois which hold that the court in an appeal will not consider constitutional questions which were not urged in the lower court. *See,* Ill.Digest, Appeal and Error, §170(2), (1959). However, there appears to be a contrary line of authority for the reviewing court to consider issues not raised in the lower court on their own motion. In *Wozniak v. Segel* (1974), 56 Ill.2d 457, 308 N.E.2d 611, the plaintiff appealed from an adverse judgment in a personal injury action and the appellate court affirmed. In its opinion, the appellate court held that,

> "In her post-trial motion plaintiff made no mention of the special finding nor did she seek relief from that finding . . ." 56 Ill.2d at 458, 308 N.E.2d at 611.

and then held that,

> "Since we are conclusively bound by the special finding and no attack has been made thereon, we are compelled to affirm the judgment." 56 Ill.2d at 458-59, 308 N.E.2d at 611.

The Supreme Court, in reversing the appellate court, stated:

> "It is one thing to say, as many opinions of this court and the appellate court have said, that a litigant is 'concluded' or 'conclusively bound' by some action he has taken or failed to take. It is a very different thing to say the court is barred from reaching a just result by that action or inaction." 56 Ill.2d at 460, 308 N.E.2d at 612.

The court observed the trial court had the power to consider matters not raised and stated that in *Freeman v. Chicago Transit Auth.* (1965), 33 Ill.2d 103, 105, 210 N.E.2d 191, 193, that while section 68.1(2) of the Civil Practice Act (Ill.Rev.Stat. 1961, ch. 110, ¶68.1(2)),

> ". . . confines a litigant, upon appeal, to those matters specifically raised in the trial court, it contains nothing that suggests an intention to interfere with the power of the trial court to act upon its own motion." 56 Ill.2d at 460, 308 N.E.2d at 612.

The court went on to observe that:

> ". . . and in that case we pointed out that the decisions of other courts sustaining the authority of a trial court to grant a new trial upon its own motion 'are based upon a recognition that the role of a trial judge is not that of a presiding officer or an umpire, and that he is responsible for the judgment that he enters.' " 56 Ill.2d at 460, 308 N.E.2d at 612.

The court then went on to recognize the fact that the appellate court, likewise, had those powers and, in quoting from *Hux v. Raben* (1967), 38 Ill.2d 223, 224, 230 N.E.2d 831-32, it observed,

"... these provisions recognize that the responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent may sometimes override the considerations of waiver that stem from the adversary character of our system." 56 Ill.2d at 461, 308 N.E.2d at 612-13.

In view of the importance of the decision involved herein, as it relates to the Authority and the people of the State of Illinois, and noting that the issue presented is one of law and not of fact, we therefore conclude that we have the power to consider the constitutional issue raised for the first time in this court.

In *People v. Ottman,* (1933), 353 Ill. 427, 430, 187 N.E. 470, 472 the court considered whether the legislature could extend or alter the terms of a criminal recognizance after its execution. The court stated:

"The law existing at the time a contract is made becomes a part of it. The constitutional provision denying the power to pass any law impairing the obligation of a contract has reference only to a statute enacted after the making of a contract."

Similarly in *Chmelik v. Vana* (1964), 31 Ill.2d 272, 201 N.E.2d 434, the Supreme Court applied the same logic in holding that a contract entered into after the passage of the Workmen's Compensation Act was properly governed by that statute.

In *Burdick v. People* (1894), 149 Ill. 600, 36 N.E. 948, the court considered the criminal sale by the defendant of a railroad ticket from Cairo to Chicago without authority. Defendant contended that the statute was unconstitutional. The court, however, held otherwise but stated in passing:

"But, if it be admitted that the ticket is a contract, the statute would only be inoperative

and of no effect as to contracts existing at the time of its passage; it would be valid and constitutional as to future contracts." 149 Ill. at 607, 36 N.E. at 950.

The court went on to hold that the ticket was sold in 1893, 18 years after the passage of the act and that the contention of the defendant was to no avail.

Lastly, attention is directed to the oft quoted case of *Schewe v. Glenn* (1922), 302 Ill. 462, 466, 134 N.E. 809, 810, where the court stated:

"Whether the statute as applied to this case is invalid is a different question. A statute tending to impair the obligation of a contract may be invalid as to contracts existing at the time of its passage, but valid as to future contracts. The law existing at the time a contract is made becomes a part of it, and the constitutional provision has reference only to a statute enacted after the making of a contract. We believe these rules are universally applied by courts. The cases are too numerous to quote."

The contract in question herein was entered into by the Authority and Standard Oil in 1957. The statute at that time merely stated, "All property belonging to the Commission and the said toll highway shall be exempt from taxation." The Supreme Court in *Korzen, supra,* said that it was the intention of the legislature that a leasehold interest for the operation of the facility was not subject to taxation and that was the obvious intention of the legislature. As observed above, the statute was amended effective October 1, 1973 and implied that a leasehold interest was subject to taxation regardless of any provision in such lease to the contrary. The 1870 Constitution, Art. I, §14 provides that,

> "No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed."

This provision was incorporated into the 1970 Constitution in Art. I, §16.

We find that the action of the legislature insofar as it imposed taxation upon existing leases executed under the Toll Highway Act was a law impairing the obligation of the contract both as to the Authority and Standard Oil. Under the provisions of the lease this amendment results in the payment of the tax in question by the Authority. Explicitly, we find this to be an impairment of a valid, existing contract contrary to the provisions hereinabove quoted of the Illinois Constitution.

Judgment of the trial court is reversed.

REVERSED.

RECHENMACHER, P.J. concur.

SEIDENFELD, J., dissents.

The majority concludes that the amendment which removed the provision granting tax exempt status to the property belonging to the Toll Authority impaired the pre-existing contract between the Authority and its privately owned lessee, Standard Oil. I find no impairment of contract in constitutional terms.

"[T]he power to excmpt property from as well as the power to levy taxes upon property is an essential element of sovereignty and can only be surrendered or

diminished by plain and explicit terms of a statute." (*People v. Bennett Med. College*, 248 Ill. 608, 609 (1911).) In this case the statute granting the exemption (Ill. Rev. Stat. 1967, ch. 121, par. 100-22) contains no express promise that the exemption will continue. And every presumption militates against finding that the legislature intended to bind itself from exempting property from taxation. *People v. City of St. Louis*, 291 Ill. 600, 606-07 (1920). See also *Small v. Pangle*, 60 l.2d 510, 514 (1975).

As a general rule, absent a constitutional violation, a taxpayer has no vested right in the continuance of particular taxing laws. *People v. C. & N.W. Ry. Co.*, 340 Ill. 102, 108 (1930); *People v. Board of Review*, 290 Ill. 467, 472 (1919). See also *Dee-El Garage v. Korzen*, 53 Ill.2d 1, 15 (1972), Kluczynski, J. dissenting.

In *Straughn v. Camp*, 293 So.2d 689, 694 (1972), the Supreme Court of Florida stated:

> "Merely because * * * leaseholds were originally granted tax exemption and they enjoyed exempt status for a number of years, affords no basis for forever removing and completely immunizing them from taxation. See, e.g., *Sovereign Camp, W. O. W. v. Lake Worth inlet District of Palm Beach County*, 119 Fla. 782, 161 So. 717, and *Curators of Central College v. Rose*, 182 S.W.2d 145, appeal dismissed 65 S.Ct. 269, 323 U.S. 678, 89 L.Ed. 650. Such exempt status may be changed by a subsequent legislature."

See also *Barwise v. Sheppard*, 57 S.Ct. 70, 73 (1936).

When the statute places an enforceable contract obligation upon the legislature to refrain from repealing tax exemptions, the legislature may be prevented from repealing a tax exempt status which it has granted. (See

e.g., *Peo. ex rel. Cty. Col. v. Northwestern U.*, 51 Ill.2d 131, 135-36 (1972).)[1] However, the intention to contract away the taxing power must expressly appear. (See Opinion of the Justices, 313 N.E.2d 882, 889 (S.Ct. Mass. 1974). See also *Wisconsin & M.R. Co. v. Powers*, 191 U.S. 379, 385 (1903)). In *Northwestern* the legislative grant of the exemption granted to property of the University was express and unequivocal. ("shall be forever free from taxation for any and all purposes." 51 Ill.2d 131 at 132). Here that intention does not appear.

There is no binding contract between the legislature and either the Authority or Standard Oil. I would therefore affirm the judgment.

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[1] Even this may not follow if an overriding public interest requires alteration or modification of even the clear contractual undertakings of the state. (See *City of El Paso v. Simmons*, 85 S.Ct. 577, 584 (1965).) I do not suggest, however, that this balancing process is applicable here.